

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**FALCON INDUSTRIES, INC.,**

**Plaintiff,**

**vs.**

**Civ. No. 12-679 JCH/GBW**

**COMBAT OPTICAL, INC.,  
et al.,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Plaintiff's *Motion for Default Judgement* [Doc. 99], in which it seeks a default judgment against Defendant Dragon Martial Arts, Inc. ("DMA"). On March 20, 2014, the Clerk of the Court entered the *Clerk's Entry of Default* [Doc. 84] against DMA. In the motion currently before the Court, Plaintiff requests entry of a default judgment adjudging DMA to have willfully infringed Plaintiff's '594 patent and enjoining DMA from further infringement; ordering DMA to return certain items to Plaintiff at DMA's own cost; and awarding Plaintiff money damages as well as pre- and post-judgment interest. Plaintiff acknowledges that its damages are not for a sum certain<sup>1</sup>, and therefore it requests discovery under Rule 69(a) and a damages hearing so that the sum of its damages may be made certain.

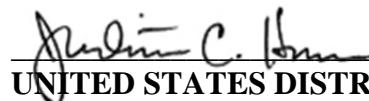
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<sup>1</sup> Plaintiff acknowledges that its damages are not currently known because the numbers and types of rail covers sold by DMA or currently held by DMA is unknown, and therefore Plaintiff seeks discovery on those issues. The Court reminds Plaintiff, however, that its damages also depend upon what is a "reasonable royalty" for each type of rail cover. That is a matter upon which Plaintiff bears the burden of proof, and as such one regarding which it must present evidence to support its contentions. Mere allegations of a reasonable royalty will not suffice.

On the record currently before it, the Court concludes that Plaintiff is entitled to a partial default judgment against DMA on liability, as well as on the injunctive relief that Plaintiff requested against DMA in the Second Amended Complaint. Accordingly, the Court directs Plaintiff to submit to the Court a proposed form of default judgment on these issues as soon as possible.

With regard to the issue of damages, the Court concurs with Plaintiff that it bears the burden to prove its damages. Accordingly, the Court will set the matter for a damages hearing in the near future. With regard to the discovery that Plaintiff requests, Plaintiff should provide the Court with a proposed discovery plan (which must include an approximate date by which Plaintiff intends to complete its discovery) at the same time it submits its proposed form of default judgment as described in the previous paragraph.

**IT IS THEREFORE ORDERED** that *Motion for Default Judgement* [Doc. 99] is **GRANTED IN PART** as described herein.

  
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**UNITED STATES DISTRICT JUDGE**